Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications Inc., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering and Technology, Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

REPLY OF SBC COMMUNICATIONS INC. TO COMMENTS ON ALTS' PETITION FOR A DECLARATORY RULING REGARDING BROADBAND LOOP PROVISIONING

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Table of Contents

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INTRODUCTION AND SUMMARY

More than twenty sets of comments have been filed supporting one or more aspects of the ALTS' petition. None adds anything substantial. They simply underscore the procedural and substantive defects of the underlying petition. Under the guise of a request for a declaratory ruling, the commenters are seeking sweeping new rules that would establish nationwide performance standards and so-called "self-executing" penalties to govern all aspects of incumbent LEC loop provisioning – particularly the provisioning of xDSL-capable loops. Such

new rules cannot be established in the context of a purported request to "clarify" or "interpret" existing rules. Accordingly, the ALTS' petition must be dismissed as procedurally improper.

Nor would it be appropriate to institute a rulemaking. The Commission has already squarely and properly concluded that the formulation of performance standards and penalties is best left to each state to determine in light of individual conditions. A one-size-fits-all approach would not only be unwise policy, it would be contrary to the statute. As the Commission has recognized, section 251 only requires ILECs to furnish loops on a non-discriminatory basis. National performance standards – particularly the absurdly strict ones advocated by several commenters – would inevitably require some or all ILECs to provide CLECs a level of service well beyond what the ILECs provide their own retail customers. But the Eighth Circuit has already held that, because the Act contemplates access to the existing ILEC network and service levels, the Commission may not mandate a superior level of service for CLECs.

In any event, the commenters have failed to establish any need for such nationwide straightjackets. Echoing ALTS, they make various allegations about access to broadband loops and supposedly discriminatory treatment by incumbent LECs. Like ALTS, however, they fail to substantiate any of these allegations or establish a record basis for new rules. In addition, the commenters wholly ignore the existing avenues – such as complaints under sections 202 and 208 of the Act and state enforcement mechanisms – that are available for addressing such grievances.

Several commenters recycle allegations from the recent Texas section 271 proceeding. Such allegations are obviously insufficient to support a new Commission proceeding, as the Commission has found them to be factually unfounded.[1]

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[1] *See* Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Servs., Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of*

Other commenters express concern about SBC's Project Pronto, claiming that it will prevent CLECs from providing copper-based xDSL service or from using the same loop to provide both voice and data service. The relevant issues with respect to Project Pronto are being dealt with by the Commission in the SBC/Ameritech merger docket, CC Docket No. 98-141. In that proceeding, SBC has shown that Project Pronto will not deny CLECs access to copper loops (quite the opposite) and that CLECs will be able of offer integrated voice/data services over the Project Pronto Next Generation Digital Loop Carrier ("NGDLC") equipment.

Finally, some of the commenters have added to ALTS' hodge-podge of loosely related issues additional suggestions of their own, on matters such as the provisioning of special access circuits and loop conditioning costs. Like ALTS' original petition, however, the proposals the comments make are contrary to statute, unwise as a matter of policy, and unnecessary in light of current market circumstances.

DISCUSSION

I. National Performance Standards and Penalties for Loop Provisioning Would Be Unlawful and Are Unnecessary

Commenters offer a lengthy wish list of performance measures governing loop provisioning. There is no point in discussing each individual proposal. The CLECs' comments contain no factual evidence that would support any of them. It should be noted, however, that many of the proposed federal performance measures are preposterous on their face, and/or at odds with prior Commission decisions. For example:

1996 To Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, FCC 00-238 (rel. June 30, 2000) ("*Texas 271 Order*").

- Network Access Solutions proposes a three-day provisioning interval for *conditioned* xDSL-capable loops. *See* Network Access Solutions Comments at 7. To SBC's knowledge, no state commission has ever adopted anything close to such an interval for conditioned loops. In Texas, for example, the Texas PUC ordered SBC to provision loops *without conditioning* in the extremely short interval of three to five days, and loops with conditioning in ten days, for orders of up to 20 loops. *See* Arbitration Award, *Petition of Rhythms Links, Inc. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Tel. Co.*, Dkt. No. 20226, at 81 (Tx. PUC Nov. 30, 1999).

- A group of CLECs propose (in a set of virtually identical comments filed by the same counsel, and apparently designed to create the impression of broad-based support) that ILECs should be required to return parsed customer service records "in parity plus ten seconds." @Link, et al. Comments at 8; *see also* CoreComm, et al. Comments at 11; CTSI, et al. Comments at 5. There could be no such standard for nondiscrimination under section 251, since the ILEC is not required to parse customer information for the CLEC. *See Texas 271 Order* ¶¶ 152-154 & n.413.

- The same CLECs propose a mandatory performance measure for sending jeopardy notifications even though, as the CLECs themselves acknowledge, ILECs are not required to send jeopardy notices at all. *See* @Link, et al. Comments at 12-13; CoreComm, et al. Comments at 17-18; CTSI, et al. Comments at 10-11.

- These CLECs suggest a standard of performing 98 percent of hot cuts (for orders of up to 10 lines) within 1 hour. Yet they give no reason why the Commission could or should depart so dramatically from the 90 percent standard set out in the Commission's New York and Texas section 271 decisions, other than the assertion that "the Commission set the bar too low." @Link, et al. Comments at 16-18; *see also* CoreComm, et al. Comments at 21-24; CTSI, et al. Comments at 13-17.

- Covad seeks, through the definition of performance measures, to shift the burden of correcting incorrect CLEC orders to the ILEC; yet CLECs in the past have argued the ILEC should not be allowed to make changes to the CLEC's service request even if it voluntarily offers to do so. Covad Comments at 16.

As these examples suggest, the CLEC commenters' whole project is illegitimate. Calling the new policies sought here "minor clarifications" cannot hide the fact that they would be a radical departure from this Commission's existing rules. Teligent Comments at 7. Nationwide performance standards and penalties – particularly ones that impose new substantive requirements – could only be enacted after notice and comment rulemaking, not in a declaratory ruling.

Beyond this, the Commission has concluded that the issue of performance standards and penalties is properly left to the individual states to resolve. This reliance upon the states is justified not only as a matter of policy – because of the familiarity of the state commissions with the specific conditions and circumstances within their respective jurisdictions – but also because it is required by statute. A one-size-fits-all approach is inconsistent with the statutory mandate of parity and would lead inevitably to provisioning that is superior (or inferior) to what the ILEC offers at retail. Finally, there is no substantial evidence that national standards are necessary.[2] Unsubstantiated and generalized allegations of violations provide no record basis for new rules. The scattershot allegations aimed particularly at SBC, for example, are demonstrably unjustified.

A. The Commission Cannot Create New National Standards and Penalties in the Context of a Declaratory Ruling

Commenters seek a new set of rules establishing detailed national performance standards and penalties for all aspects of loop provisioning. It is uncontested that such rules do not currently exist. It follows inexorably that the Commission cannot enact these rules in response to a petition for a declaratory ruling.

As noted in SBC's opening comments, SBC Opp. at 3-5, the Commission has consistently rejected similar requests brought under the guise of a declaratory ruling. *See, e.g.*, Memorandum Opinion and Order, *American Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charges*, 4 FCC Rcd 550, 551-52, ¶ 18 (1989); Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform*, 14 FCC Rcd 14221, 14317-19, ¶¶ 187-188 (1999). The Commission cannot in the context of a declaratory

[2] For example, Covad's bald assertion that Internet access customers and other users of xDSL services have a "national, uniform expectation of service quality" – as opposed to comparing a CLEC's service quality to the performance of the ILEC and other competitors in that market – is highly dubious. *See* Covad Comments at 10.

ruling "read into the rules policies and procedures that were simply not contemplated when the rules were drafted." Order, *GVNW Inc./Management Petition for Declaratory Ruling, or Alternatively, a Waiver of Section 36.612(a) of the Commission's Rules, USF Data Collection*, 11 FCC Rcd 13915, 13918, ¶ 10 (1996) ("*USF Data Collection Order*").

Instead, "such substantive modifications to the Commission's rules for an entire class of companies . . . require a rulemaking proceeding rather than a declaratory ruling." Memorandum Opinion and Order, *GVNW Inc./Management and Citizens Utilities Company Applications for Review*, 14 FCC Rcd 13670, 13674-75, ¶ 8 (1999); *see also USF Data Collection Order*, 11 FCC Rcd at 13918, ¶ 10. A rulemaking is the *only* appropriate procedural vehicle for consideration of the comprehensive new scheme of national performance standards and penalties that commenters propose. But, as SBC discusses below, such a rulemaking is unnecessary and inappropriate because commenters' requests have no basis in the language or policies of the 1996 Act, and their allegations of existing problems are, at best, unsubstantiated.

B. National Performance Standards and Penalties Would Be Unwise and Unlawful

Section 251(c) of the Act requires that ILECs provide interconnection and access to UNEs "on rates, terms, and conditions that are . . . nondiscriminatory." 47 U.S.C. § 251(c). The Commission has held that this nondiscrimination standard mandates that, where there is a retail analogue, incumbents provide network elements to CLECs in "substantially the same time and manner that an incumbent can for itself." *Local Competition Order*,[3] 11 FCC Rcd at 15763-64,

[3] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, *modified on recon.*, 11 FCC Rcd 13042 (1996), *vacated in part, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) ("*Local Competition Order*").

¶ 518; *see also* Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, 20616, ¶ 135 (1997). Where UNEs without retail analogues are involved, the incumbent must provide access in a manner that allows an efficient competitor a "meaningful opportunity to compete" in the particular market at issue. *Id.* at 20614, ¶ 130 (internal quotation marks omitted).

These established standards reflect the fact that the 1996 Act does not mandate a minimum service level, nor does it require an incumbent to redesign its network to provide CLECs with better access to network elements than what the incumbent itself enjoys. To the contrary, the Eighth Circuit has expressly held that that the Commission cannot mandate a superior level of service for CLECs:

> Subsection 251(c)(2)(C) requires incumbent LECs to provide interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself. . . ." Plainly, the Act does not require incumbent LECs to provide its competitors with superior quality interconnection. Likewise, subsection 251(c)(3) does not mandate that requesting carriers receive superior quality access to network elements upon demand.

Iowa Utils. Bd. v. FCC, 120 F.3d 753, 812 (8th Cir. 1997), *rev'd in part on other grounds sub nom. AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). Those Eighth Circuit holdings that were not subsequently reviewed and overturned by the Supreme Court, which include the court's "superior quality" holding, are binding on the Commission. *See Texas 271 Order* ¶ 235 ("The Supreme Court did not specifically review that aspect of the Eighth Circuit's holding, which is, therefore, binding on us unless and until it is vacated.").[4]

[4] Citing decisions relating to technical feasibility, Network Access Solutions maintains that the Commission may "assume that each ILEC can reasonably comply with a requirement that has been found acceptable for any other ILEC." Network Solutions Comments at 7 & n.8. Discrimination and technical feasibility are, of course, very different concepts with very different

Performance standards thus must be adapted to the particular circumstances of the incumbent carrier in question, and only the states are in a position to do that. A national performance standard could not take into account the differences in underlying incumbent networks and systems. For some incumbents, the standard would be too low, and therefore ineffectual. For other incumbents, the standard would require more than their existing networks can offer. The state-by-state application process Congress prescribed for section 271 reflects this reality. *See* 47 U.S.C. § 271(d)(1); *see also* Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, 4217 (1999) (Statement of Commissioner Michael K. Powell) (noting that "state commissions do have an intimate understanding of the applicant, the local market and the various technical and economic issues surrounding [271] checklist compliance" and that the Commission could not "possibly develop the performance metrics and undertake the technical evaluations that a state commission can").

Moreover, it is hard to imagine that the Commission could ever craft "business rules" for implementing performance standards that would be valid across all ILECs. *See* Network Access Solutions Comments at 8. In adopting 20 performance measurements in the SBC/Ameritech merger conditions, for example, the Commission found it appropriate to depart from the Texas-based default measures and rely upon measures defined in California for SBC's operations in California and Nevada. Memorandum Opinion and Order, *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines*, 14 FCC Rcd 14712, 14868, ¶ 379 (1999)

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legal rules.

("*SBC/Ameritech Merger Order*"). What Rhythms terms "unsustainable differences likely to arise from independent state determinations," Rhythms Comments at 4, are in fact the necessary results of the Act's nondiscrimination standard and the states' assigned roles under sections 251 and 252. Indeed, because the Act itself contemplates that pricing and the terms for interconnection and access will be set on a state-by-state basis, it is unsurprising that Rhythms makes no effort to describe what differences, exactly, would be "unsustainable."

In short, provisioning intervals can only be required to enforce section 251's nondiscrimination rules if they are tied to the retail performance of the particular ILEC. For example, SBC's failure to meet the Texas PUC's three-day standard for BRI loop provisioning was not proof of discrimination, where SBC's analogous retail provisioning intervals in Texas were five to ten days. *Texas 271 Order* ¶¶ 293-294. Even some of the CLECs that argue for national standards accept that performance standards must in fact be "directly tied to the intervals ILECs meet when provisioning loop [analogues] for themselves." WorldCom Comments at 9-10; *accord* BlueStar Comments at 3 (ILECs should be required "to provide services to CLECs in a time frame equal to the timeframe that ILECs provide to themselves and their affiliates"); KMC, et al. Comments at 5-6 (asking Commission to clarify that ILECs must provision loops "at a level constituting parity with the interval and quality with which the ILEC provides loops to itself").

This Commission previously determined that it would be "premature" to consider the adoption of national performance standards precisely because "states are considering performance standards" and because the Commission has not "developed a sufficient record to consider proposing performance standards." Notice of Proposed Rulemaking, *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection,*

and Operator Services and Directory Assistance, 13 FCC Rcd 12817, 12869, ¶ 125 (1998). That remains true today. As several CLECs admit, "the Section 271 process to date has been a laboratory" for developing new performance measures and standards. CoreComm, et al. Comments at 6. For instance, the Commission last month applauded the Texas Commission's expected implementation of a new "outages on conversion" measure for hot cuts. *Texas 271 Order* ¶ 273. Far from making "it difficult and time consuming to efficiently evaluate . . . performance," as @Link Networks claims (Comments at 3), such innovation by the states eases the Commission's own review. And, as the new Texas initiative shows, state efforts are not yet mature. These issues are being considered by scores of states across the country, in connection with planned section 271 applications, intercarrier arbitrations, and other proceedings. Dictating uniform federal measures would prematurely shut down these "laboratories."

As recently as the *Texas 271 Order*, the Commission reiterated that "metric definitions and incumbent LEC operating systems will likely vary among states," and any assessment of compliance with the 1996 Act must "consider the BOC's performance within the context of each respective state." *Texas 271 Order* ¶ 55. It could not be otherwise. The Commission should once again decline to impose national performance standards, because such standards would be unwise, unnecessary, and unlawful.

C. Commenters Provide No Evidence That National Performance Standards and Penalties Are Necessary

Even if the commenters could overcome the statutory and policy objections to national performance standards and penalties, they have still failed to make out any case that such standards and penalties are necessary. That is, they have failed to establish a problem that needs to be solved at the national level.

In its petition, ALTS made a number of allegations – some general, and some specific –

about ILEC ordering processes. These allegations centered on sequential provisioning intervals; information regarding high-capacity facilities; alternatives to DLC-served loops; and access to subloops. SBC responded to those claims in detail in its opening comments and showed that they were unfounded. SBC Opp. at 5-13. Most of the commenters simply repeat these same claims, without offering any more detail or support to ALTS' skeletal petition.

Like ALTS, moreover, these commenters wholly ignore existing avenues that are available to carriers that believe they have received discriminatory treatment. It is flatly untrue that "there are no penalties for failing to comply with" existing requirements. BlueStar Comments at 3. Not only can carriers seek relief with state commissions; they can also petition this Commission for relief under the Act. *See* 47 U.S.C. §§ 202, 208, 251, 271. The Commission itself listed "several options" parties have for seeking relief in its *Local Competition Order*. *See Local Competition Order*, 11 FCC Rcd at 15563-65, ¶¶ 124-129. Similarly, in the *Texas 271 Order*, the Commission noted some of the various protections against non-compliance with the requirements of sections 251 and 271, and explained that performance measurements are just one of several tools. *Texas 271 Order* ¶¶ 420-421. Indeed, the Commission has established an Enforcement Bureau and accelerated docket proceedings precisely to allow carriers to seek rapid relief if another carrier fails to comply with the Act's requirements. Commenters have made no showing that these existing mechanisms for relief are inadequate to address whatever problems they perceive. If those perceived problems are true violations of the Commission's existing rules, the commenters should seek relief under these measures. The fact that they very rarely have done so suggests that their allegations of rampant, systematic discrimination by ILECs are fiction, not fact.

SBC is not in a position to respond to specific allegations made against other companies. A number of commenters, however, level accusations at SBC, to which SBC will briefly respond.

For instance, a number of CLECs continue their strategic attack on Project Pronto, seeking to derail this $6 billion network investment initiative that will improve the reliability of SBC's POTS networks while bringing xDSL service to 20 million customers who cannot be served today. *See* SBC Opp. at 10-13. The CLECs' attacks on Project Pronto are clearly prompted by self-interest, not the public interest. Project Pronto will result in a more advanced and efficient network, and it directly responds to the CLEC criticism that some ILECs have "abandoned" hard-to-serve customers when making their xDSL deployment plans. Rhythms Comments at 11 (quoting ALTS Petn. at 30); *see* SBC Opp. at 11 n.3. In fact, the CLECs "recognize that deployment of fiber-fed [remote terminals] can increase competition." KMC Telecom, et al. Comments at 8. The Commission should be careful that its efforts to assist CLECs are not at the expense of additional competition that will result from ILEC network upgrades such as Project Pronto.[5]

The Commission should be particularly wary of CLECs' attacks on Project Pronto in light of the patently false assertions being made. As explained in SBC's initial Opposition and discussed extensively in CC Docket 98-141, for example, the claim that CLECs will "need to order two loops to reach a customer with a voice and data offering," Prism Comments at 6, *see also* ASCENT Comments at 7, is simply untrue. *See* SBC Opp. at 12. The CLECs are well

[5] Global Crossing's CEO recently argued that the Commission should not be afraid "to help the strong succeed and the weak to die" in order to encourage the development of broadband technology. *See* Communications Daily at 5 (June 29, 2000).

aware of this, as their own comments show. *See* Prism Comments at 7 (acknowledging SBC's agreement to offer integrated voice/data service).

Project Pronto also does not entail any plan or policy of denying CLECs' use of alternative copper facilities. *See* KMC, et al., Comments at 9. SBC is not removing copper facilities from service as part of its Project Pronto upgrades; it will keep overlaid copper loops in service as long as doing so is consistent with SBC's standard facilities-retirement policies. SBC Opp. at 10. The related suggestions that SBC has an obligation to keep obsolete copper in place solely for CLECs' use, *see, e.g.*,CTSI Comments at 23, or to install new copper where none otherwise would exist, have already been soundly and properly rejected by the Commission and the Eighth Circuit, respectively. *See* SBC Opp. at 9-10 (discussing *Line Sharing Order*,[6] 14 FCC Rcd at 20950-51, ¶ 80, and *Iowa Utilities Board* decision).

It also is not the case that SBC is "denying access to subloops." Allegiance Comments at 9-10; Rhythms Comments at 14 n.49. As SBC has explained, Project Pronto will offer CLECs the full loop unbundling required by this Commission, including unbundling of the copper subloop to the customer premises. *See* SBC Opp. at 12. This will be *in addition to* the new options of data service or integrated voice/data service from the customer premises to the central office. *Id.* The fact that it is not "practicable" to separate NGDLC fiber feeder from the serving switch has nothing to do with SBC's unbundling policies or xDSL deployment, and applies equally to the many POTS lines that various ILECs serve using integrated DLC technology. *See*

[6] Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*").

SBC Opp. at 12-13 (quoting *UNE Remand Order*,[7] 15 FCC Rcd at 3793-94, ¶ 217 & n.418). This is not an issue the Commission can solve by regulatory fiat. All the Commission could do in this proceeding is restate its existing rules regarding subloop unbundling, which, as WorldCom puts it, would be an "unnecessary" exercise. WorldCom Comments at 4-5; *see also* SBC Opp. at 11.

Commenters' other claims of "bad acts" by SBC have already been rejected in various proceedings, most recently the Texas 271 proceeding. For instance, Prism maintains that SBC does not allow CLECs to use unbundled loops for both voice and data services. Prism Comments at 7. The Commission heard similar claims (focusing on the UNE Platform) in the Texas proceeding, and found them to be wrong. *See Texas 271 Order* ¶ 325 ("The record reflects that SWBT allows competing carriers to provide both voice and data services over the UNE-P").

KMC, NewSouth Communications, and NEXTLINK insist that "[t]he comments to [the Texas 271] proceeding, and the findings of the Texas Commission, only serve to demonstrate that SBC's provisioning is clearly discriminatory when compared to the streamlined access SBC provides to its own DSL sales division." KMC, et al. Comments at 18. Covad makes a similar claim of "consistent, anticompetitive delays in loop provisioning." Covad Comments at 5. The Texas Commission, the Department of Justice, and this Commission have all considered these arguments, and concluded that SBC is providing nondiscriminatory access. *See Texas 271 Order* ¶¶ 282-318.

The suggestion that it "is plainly unlawful" for an ILEC to provide loop make-up information using partially manual processes, Network Access Solutions Comments at 5, is

[7] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*").

equally absurd. *See also* Covad Comments at 20-21. The *UNE Remand Order* directly rejected the same argument. *See UNE Remand Order*, 15 FCC Rcd at 3886, ¶ 429. The *Texas 271 Order* likewise confirmed that nondiscrimination does not require any particular type of system or database for access to loop make-up information. *Texas 271 Order* ¶¶ 166-167.

The *Texas 271 Order* additionally disposed of the contention that SBC has failed to provide pre-order information that can be parsed for integrated ordering. *Compare* DSLnet Comments at 8 (citing AT&T and WorldCom arguments) *with Texas 271 Order* ¶¶ 152-161 (rejecting same arguments). Likewise, with respect to ATG's allegations of problems provisioning IDSL-capable loops (which ignore that problems often have been attributable to ATG itself), the Commission acknowledged the industry issues surrounding use of BRI loops for IDSL services, and held that they did not support claims of discriminatory provisioning. *See* CompTel Comment Attach. (Tyriver Aff.) ¶¶ 5-15; *Texas 271 Order* ¶¶ 301-302.

Network Plus's claims about the hot cut policies of SNET in Connecticut are equally outlandish. *See* CTSI, et al. Comments at 13-15. SNET's standard hot cut process provides for completion of a loop conversion within a two-hour "window" during normal business hours, without direct CLEC involvement during the cut. The Connecticut Department of Public Utility Control ("DPUC") has established rates for this standard conversion process. In addition to this automatic hot cut process, SNET offers a coordinated, manual hot cut process for unbundled loops. Furthermore, SNET offers CLECs enhanced provisioning options for many wholesale services that include, among other things, the option of setting a specific time for a loop cutover. These enhanced options are available to CLECs pursuant to a separate contract or memorandum of understanding ("MOU"), which outlines the terms and conditions of the service and the rates.

SNET has appealed and obtained a stay of the DPUC's proposed tariffing of SNET's

enhanced provisioning services, which include the coordinated cutover option for most wholesale services. SNET's point is that this is a "premium" offering that does not constitute a base-line service subject to tariffing under Connecticut precedent. The *Texas 271 Order* in fact recognized the legal distinction between standard, nondiscriminatory hot cut processes and optional processes offered for the benefit of CLECs. *See Texas 271 Order* ¶¶ 259-277 (discussing "CHC" and optional "FDT" processes in Texas).

Finally, some claims lack even a colorable relevance to ALTS' petition. *See, e.g.*, CompTel Comments Attach. (Tyriver Aff.) ¶ 16 (alleging slow response to ATG billing inquiry); CTSI, et al. Comments at 14 n.33 (complaining about transfer of a Connecticut account representative); Rhythms Comments at 9 (intimating violation of SBC/Ameritech merger conditions regarding separate advanced services affiliate).[8]

II. The Additional Requests Made by Commenters Are Both Procedurally and Substantively Defective

As did ALTS, a number of commenters ask the Commission to extend section 251 requirements to, and establish national performance standards for, special access circuits. Commenters also seek to reduce, if not eliminate, charges for loop conditioning. And they raise miscellaneous issues such as a request for new rules regarding access to ILEC facilities in multi-tenant buildings, *see* Teligent Comments at 4, and line splitting, CPI Comments at 9. These

[8] The CPSOS system used by SBC's separate advanced services affiliate is owned by the separate affiliate, not SBC incumbent LECs as Rhythms suggests. Also contrary to Rhythms' assertion, SBC incumbent LECs do not enter loop requests on behalf of the separate affiliate. Rather, as expressly permitted under paragraph 4(b) of the SBC/Ameritech merger conditions, service representatives engaged in joint marketing pass customer information to the affiliate for placement of any necessary orders by the affiliate. *See SBC/Ameritech Merger Order*, 14 FCC Rcd at 14975-76.

proposals for new requirements on ILECs are generally unwise and unlawful, and in all cases far outside the scope of a request for declaratory relief.

A. Special Access Circuits

As we explained in detail in our opening comments, SBC Opp. at 13-17, section 251's nondiscrimination standards for unbundled loops do not apply to special access services, which are not UNEs at all. Commenters entirely miss the physical and legal differences between unbundled loops and special access services when they argue, without any explanation, that provisioning of special access circuits "should be subject to the same performance standards and penalties" as loops. WorldCom Comments at 13; *see also* ASCENT Comments at 8; Focal Communications Comments at 6 n.13.

Moreover, special access services are governed by 47 U.S.C. § 202(a), and any complaints concerning their provision must be raised under that section and section 208. Although some CLECs acknowledge the different statutory schemes at issue, *see* Focal Communications Comments at 6, 8; Time Warner Comments at 2, 5, no commenter supplied any legal or policy justification for extending section 251 requirements to special access services, much less for establishing nationwide maximum provisioning intervals for such services. The special access market is already subject to vigorous and growing competition. Indeed, just a few weeks ago the Commission observed that "[c]ompetitive access, which originated in the mid-1980s, is a mature source of competition in telecommunications markets." Supplemental Order Clarification, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183, ¶ 18 (rel. June 2, 2000). Given the advanced state of competition in this market, there is no need for new performance standards or regulations.

In any event, the Commission has required performance reporting addressing the quality of BOC access services, including special access services, for a decade. *See* SBC Opp. at 15-16. Commenters have given no indication that this information is insufficient for the Commission to determine whether an incumbent is discriminating in violation of section 202. Section 272(e) imposes additional nondiscrimination obligations with respect to access services. 47 U.S.C. § 272(e)(1). Indeed, the Commission held in the *Texas 271 Order* that SBC had shown "that it will provide accurate data regarding actual service intervals so that unaffiliated parties can evaluate the performance SWBT provides itself and its affiliates and compare such performance to the service quality SWBT provides to competing carriers." *Texas 271 Order* ¶ 412 n.1198.

B. Loop Conditioning

The Commission concluded in the *UNE Remand Order* that incumbents "should be able to charge for conditioning . . . loops,"[9] endorsing its determination in the *Local Competition Order* that the requesting carrier should bear, under the cost recovery provisions of section 251(d)(1) of the Act, "the cost of compensating the incumbent LEC for [loop] conditioning."[10] Petitions for reconsideration of that decision are currently pending before the Commission. It is inappropriate for parties to challenge the *UNE Remand Order* collaterally through a petition for a declaratory ruling when the very same issue is already pending before the Commission. And it is doubly inappropriate for CLECs to maintain that they are asking the Commission only to "clarify" its policies on loop conditioning, *e.g.*, Network Access Solutions at 10; CTSI, et al. Comments at 22, when they are in fact seeking fundamental changes.

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[9] *UNE Remand Order*, 15 FCC Rcd at 3784, ¶ 193 (citing *Local Competition Order*, 11 FCC Rcd at 15692, ¶ 382).

[10] *Local Competition Order*, 11 FCC Rcd at 15692, ¶ 382 & n.830.

In any event, the underlying argument is meritless. The cost to modify the incumbent's network is a forward-looking cost that is incurred specifically for the CLEC's benefit. As the FCC has recognized, conditioning loops to remove impediments such as load coils or excessive bridged taps "can be expensive." First Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 4761, 4767, ¶ 10 n.10 (1999). ILECs are entitled to recover these costs pursuant to section 252(d)(1).[11]

C. Miscellaneous Issues

No common theme emerges from the CLECs' other requests – except that the CLECs want new rules without going through either state proceedings or the rigorous analysis of a Commission adjudication or rulemaking, which would expose the legal and logical flaws in their arguments.

This is illustrated by Teligent's proposal that the Commission establish proxy rates for subloops "similar to those found in Section 51.513 of the Commission's rules." Teligent Comments at 6. Teligent, of course, provides no factual record on which the Commission could set rates. The whole point of the Rule 513 proxies, moreover, was that states might take some time after the Commission's *Local Competition Order* to conclude their ratemaking proceedings; consistent with its view of the statutory scheme, the FCC established methodologies before the states could establish actual rates. *See Local Competition Order*, 11 FCC Rcd at 15883, ¶ 767.

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[11] The argument that ILECs should "assume an all-feeder network architecture" that does not use bridged taps or load coils when determining the costs of removing that very same equipment is nonsensical on its face. *See* Network Access Solutions Comments at 11. This argument becomes even more ridiculous when contrasted with CLECs' simultaneous demands that SBC install or maintain all-copper loops, rather than a fiber-feeder architecture, solely for CLECs' advanced services. *See id.* at 10-11; Jato Comments at 5 n.3.

Here, by contrast, the states are well ahead of the Commission. Texas, for instance, has already approved terms and prices for subloop unbundling, whereas this Commission has absolutely no record on the issue. *See Texas 271 Order* ¶ 30 n.70 ("We note that the T2A already contains provisions addressing many of these items" required by the *UNE Remand Order*). Given the Supreme Court's confirmation that the state commissions – not this Commission – are responsible for setting UNE prices, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 384 (1999), it would be inappropriate and unsupported by the *Local Competition Order* for the Commission to attempt to preempt or influence that rate-setting though the establishment of proxies.

CONCLUSION

For the foregoing reasons and the reasons stated in SBC's initial Opposition, ALTS' petition for declaratory ruling should be denied.

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